

# MAINE NATURAL RESOURCE CONSERVATION PROGRAM PROJECT AGREEMENT

**Regulatory Entities:** Maine Department of Environmental Protection (DEP) and U.S. Army Corps of Engineers, New England District (Corps).

**Fund Administrator:** The Nature Conservancy, a District of Columbia nonprofit corporation with a local office in Brunswick, Maine (TNC).

**Cooperating Entity:** The Town of Harpswell, a municipal government organized and existing under the laws of the State of Maine (Town or Cooperating Entity).

**Project Name and Location:** Town of Harpswell Conservation Mooring and Eelgrass Restoration Project, in the Town of Harpswell, Cumberland County, Maine (Project).

**Project Area Covered by this Agreement:** Certain area, including 20 privately-owned moorings permitted by the Town, located within three mapped eelgrass beds in Harpswell, Cumberland County, Maine, and shown on the map attached as Exhibit B (Project Area).

**Description of Project:** This Project will restore approximately 8,740 square feet of subtidal eelgrass (*Zostera marina*) habitat and enhance additional surrounding eelgrass habitat through the replacement of traditional block-and-chain moorings with conservation moorings. Throughout this document, the term “conservation mooring” refers to the helical anchor, the elastic rode, and any associated tackle. The Project Area includes 20 moorings that are permitted annually by the Cooperating Entity and consist of conservation moorings first obtained by the Cooperating Entity and then transferred to individual mooring holders. All transfers of mooring ownership by the Cooperating Entity must ensure compliance with applicable rules of this Project Agreement. The existing moorings will be located within eelgrass beds mapped by the DEP and located adjacent to the Maquoit and Middle Bay Beginning with Habitat Focus Area of Statewide Significance. The specific moorings to be replaced will be determined by the Cooperating Entity using approved selection criteria, as outlined in the Restoration Work Plan, and including:

- Location of the mooring within the eelgrass bed and associated scar area. Larger scar areas will be given priority.
- Substrate within the scar area. Mooring scars with high proportion of coarse material (gravel) and high sulfide content (from decaying vegetation) will be given lower priority.
- Mooring holder interest in participation in the conservation program.

The Cooperating Entity will monitor the success of the Project and develop Best Management Practices for maintenance of conservation moorings and for the future conversion of additional moorings in eelgrass beds. With regards to any future conversion of additional moorings in eelgrass beds, DEP, the Corps, and TNC note and support the Town’s stated plans to update their mooring regulations to prohibit conversion of conservation moorings back to block-and-chain moorings throughout mapped eelgrass beds in Harpswell.

**Project Cost:**

Maine Natural Resource Conservation Program (MNRCP) Contribution:	\$ 224,406
Other Project Cost:	<u>\$ 9,593</u>
Total Project Cost:	\$ 233,999

**Restoration Work Plan:** No later than May 1, 2022<sup>[BE1]</sup>, the Cooperating Entity shall submit to TNC, for review and approval by TNC, DEP and the Corps, a detailed Restoration Work Plan, which includes a Project schedule and a monitoring plan (the “Restoration Work Plan”), following guidelines to be provided by TNC (based on the Corps’ Mitigation Guidance document). Upon approval of the Restoration Work Plan and associated documents, the Cooperating Entity shall fully implement such plan.

**Management and Use of Project Area:** Long-term maintenance of the conservation moorings will be the responsibility of the mooring holder, oversight of which is the responsibility of the Cooperating Entity, for instance through the permitting process. The conservation moorings have an expected useful life of approximately 10-15 years with regular maintenance. Annual inspections are recommended and if any parts of the mooring are damaged, they should be replaced. The Town agrees that it will not permit block-and-chain moorings in these 20 locations in the future and, if mooring replacements are needed, will require the use of a like-kind or more ecologically beneficial mooring type. If the location of any of the 20 conservation moorings associated with the Project is changed, the new location will be selected using the criteria outlined above and in the approved Restoration Work Plan and shall be approved by DEP and the Corps.

**Term of Monitoring Obligations:** The term of the Cooperating Entity’s monitoring obligations, as more particularly described in General Provisions Section G shall commence on the effective date of this Agreement and terminate, upon approval from DEP and the Corps, five years following the completion of all restoration activities set forth in the Restoration Work Plan (the “Monitoring Term”). Additional monitoring may be required to document Project success, in which case the Monitoring Term may be extended.

**Expiration of Funding Commitment:** TNC’s obligation to pay the MNRCP Contribution to the Cooperating Entity shall expire, at TNC’s option, on December 31, 2027<sup>[BE2]</sup>, or at the end of the Monitoring Term, whichever is later.

**Payment:** TNC shall pay the MNRCP Contribution as follows:

- a) Up to \$124,025 will be paid to the Cooperating Entity following receipt and approval by TNC, DEP, and the Corps of the Restoration Work Plan;
- b) Up to \$79,981 will be paid to the Cooperating Entity following implementation and completion of the restoration activities set forth in the Restoration Work Plan and following: 1) DEP and the Corps’ receipt and approval of the Restoration Completion Report, and 2) TNC’s approval of written documentation of costs associated with implementation of the Project; and
- c) Up to \$20,400 in contingency funding will be paid to the Cooperating Entity if: 1) the Cooperating Entity can demonstrate that these funds are needed for the completion of the Project, and 2) written documentation of costs is submitted and approved by TNC, DEP, and the Corps. TNC is not obligated to pay these contingency funds to the Cooperating Entity and shall only do so if the need is approved by DEP and the Corps.

Any additional project costs above the MNRCP award are the sole responsibility of the Cooperating Entity.

TNC, DEP, and the Cooperating Entity, mutually agree to perform this Agreement in accordance with Title 38, Maine Revised Statutes, Section 480-Z, as amended, and with the terms, conditions, plans, and specifications of the Project, incorporated herein by reference.

Subject to the availability of funds for this purpose, TNC hereby agrees, in consideration of the agreements made by the Town herein, to pay to the Town the MNRCP Contribution amount set forth above. The Town hereby agrees, in consideration of the agreements made by TNC herein, to implement the Project in accordance with this Agreement.

**Exhibits:** The following exhibits are hereby incorporated into this Agreement:

Exhibit A General Provisions

Exhibit B Project Map

In witness whereof, the parties hereto have executed this Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_, 2022 by their duly authorized representatives.

**THE NATURE CONSERVANCY**

By: \_\_\_\_\_  
Alexandre H. Mas  
Associate State Director, Conservation

**TOWN OF HARPSWELL**

By: \_\_\_\_\_  
Name:  
Title:

**STATE OF MAINE**  
**Department of Environmental Protection**

By: \_\_\_\_\_  
Melanie Loyzim  
Commissioner

## **EXHIBIT A**

### **GENERAL PROVISIONS**

The Cooperating Entity specifically recognizes that the Project creates an obligation to use and maintain the Project Area consistent with Title 38 M.R.S. Section 480-Z, and the following requirements:

**A. AUTHORITY:** The Cooperating Entity warrants and represents that: it possesses the legal authority to apply for the MNRCP Contribution and to otherwise carry out the Project in accordance with the terms of this Agreement; and that a resolution or similar action has been duly adopted by the governing body of the Cooperating Entity authorizing the filing of the application and implementation of the Project, including all understandings and assurances contained herein, and directing and authorizing the person identified as the official representative of the Cooperating Entity to act in connection with the application and to provide such additional information as may be required by TNC or the DEP and to enter into this Agreement. If the Cooperating Entity is a non-governmental organization, it shall provide TNC with a current certificate of good standing and a copy of its bylaws and articles of incorporation. In addition, the Cooperating Entity shall notify TNC immediately of any change in its corporate or tax status or operations, or if any official judicial, legislative, or administrative proceeding is instituted against the Cooperating Entity that may affect the commitments and obligations agreed herein.

**B. COMPLIANCE WITH LAWS:** The Cooperating Entity represents, warrants, and agrees that it; (a) has or will obtain at Cooperating Entity's expense (except to the extent otherwise explicitly stated in this Agreement) any permits, licenses, or authorizations, including without limitation, a property owner's prior permission before entering upon any private property, that are required under this Agreement, and; (b) will comply with all statutes, laws, ordinances, executive orders, rules, regulations, court orders, and other governmental requirements for the State of Maine (collectively, "Applicable Laws"). Cooperating Entity must not take any actions that might cause TNC, DEP, or the Corps to be in violation of any Applicable Laws.

**C. USE OF FUNDS:** The Cooperating Entity shall use moneys received under this Agreement only for the purposes of accomplishing the Project.

**D. USE AND MAINTENANCE OF PROJECT AREA:** The Cooperating Entity agrees that the Project Area shall be used, operated, and maintained for the long-term protection of eelgrass habitat, as outlined in this Agreement, and in accordance with all applicable laws, including without limitation Title 38 M.R.S. § 480-Z and in accordance with the Restoration Work Plan for the Project. The Cooperating Entity further agrees that any replacement of conservation moorings associated with the Project shall be with like-kind or more ecologically beneficial moorings.

**E. RETENTION AND CUSTODIAL REQUIREMENTS FOR RECORDS:** The Cooperating Entity agrees to maintain records, documents and other evidence pertaining to all costs and expenses incurred in sufficient detail to reflect all costs and expenses for which payment or reimbursement is claimed. These records shall be maintained for a period of three years after the end of the Monitoring Term, or if there is no Monitoring Term, for a period of three years after closing on the purchase of the Project Area. The records of the Cooperating

Entity pertaining to the Project shall at all times within such three year period be available for inspection, review and audit by DEP and TNC. Any expenditure of the MNRCP Contribution by the Cooperating Entity that TNC determines, in its sole reasonable discretion, are not permitted hereunder shall be promptly repaid by the Cooperating Entity (or deducted from any subsequent payments hereunder by TNC).

**F. PROCUREMENT:** The Cooperating Entity shall follow its own policies with regard to documentation of procurements and maintain documentation of such policies. If the Cooperating Entity does not have written procurement policies, it shall retain documentation for procurements (over US \$5,000 outside the U.S. or over \$10,000 in the U.S.). Such documentation shall include sole source justification, if appropriate, or documentation of a competitive process or comparison shopping.

**G. REPORTING AND ANNUAL MONITORING REQUIREMENTS:** For projects that require a Monitoring Term, the Cooperating Entity shall report to TNC, the DEP and the Corps on the status of the Project, and on the condition of the Project Area, on a monitoring form approved by TNC. The Cooperating Entity shall send the form annually, not later than December 15<sup>th</sup> of each year, to: (a) the ILF Administrator of DEP, at State House Station 17 Augusta, Maine 04333; (b) the Policy Technical Support Branch, Regulatory Division, New England District Corps of Engineers, 696 Virginia Road, Concord, MA 01742-2751; and (c) The MNRCP Manager, The Nature Conservancy, 14 Maine Street, Brunswick, ME 04011.

**H. ASSIGNMENT:** This Agreement may not be assigned by the Cooperating Entity in whole or in part without the prior written consent of TNC and the DEP.

**I. LOBBYING AND POLITICAL CAMPAIGNING:** The Cooperating Entity shall not use any portion of funds transferred under this Agreement to engage in any lobbying. The Cooperating Entity shall not use any portion of funds transferred under this Agreement to participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office, to cause any private inurement or improper private benefit to occur, or to take any other action inconsistent with Section 501(c)(3) of the US Internal Revenue Code.

**J. RIGHT OF ENTRY:** The DEP, the Corps and TNC, their employees, agents and representatives, shall each have the right to enter the Project Area to assure compliance with the terms of this Agreement and any applicable laws.

**K. ENFORCEMENT ALTERNATIVES:** In the event that the Cooperating Entity does not meet one or more of its obligations under this Agreement, or in the event of dissolution of the Cooperating Entity, the DEP may exercise, in its sole discretion, all rights and remedies available at law or in equity. In the event that the DEP exercises any of the rights available to it upon default of the Cooperating Entity, the Cooperating Entity shall reimburse the DEP for its costs of enforcement and collection, including reasonable attorney fees.

**L. MEDIA ANNOUNCEMENTS:** The DEP, TNC and the Cooperating Entity shall have the opportunity to review and comment on proposed media announcements concerning the Project prepared by any party to this Agreement. Any signage or advertisement of the Project shall reference the contribution of the Maine Natural Resource Conservation Program and shall be

subject to review and comment by DEP, the Corps, and TNC.

**M. INDEMNITY:** The Cooperating Entity shall defend, indemnify, and hold harmless TNC and DEP against any and all claims for loss, personal injury, death, property damage, or otherwise, arising out of any act or omission of the Cooperating Entity's employees or agents in connection with this Agreement or the Project Area. No legal partnership or agency relationship is established by this Agreement. No party is authorized or empowered to act as an agent, employee or representative of the others.

**N. TERMINATION:** TNC shall have the right to terminate this Agreement for any reason upon 30 days prior written notice to the Cooperating Entity, DEP and the Corps, in which event payment for work satisfactorily completed by the Cooperating Entity will be adjusted accordingly. Without limiting the generality of the foregoing, the Cooperating Entity understands that TNC may terminate this Agreement in the event that the Cooperating Entity is not making sufficient progress towards the completion of the Project, including, without limitation, raising sufficient funding to pay the Other Project Costs. In addition, it is understood that TNC shall have no obligation to provide funding under this Agreement beyond the Expiration Date.

**O. SUCCESSORS AND ASSIGNS:** Except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. In the event that the DEP ceases to exist, the rights and responsibilities of that party shall automatically be vested in any successor agency designated by the Legislature. Failing legislative designation, the successor agency shall be as determined by the Governor. In the event that TNC ceases to exist, the rights and responsibilities of that party shall vest in an entity designated by the DEP.

**P. AMENDMENT:** This Agreement may not be amended, in whole or in part, except with the written consent of all of the parties hereto.

**Q. COUNTERTERRORISM, ANTI-MONEY LAUNDERING AND ECONOMIC SANCTION LAWS:** Cooperating Entity certifies that, to the best of its knowledge, Cooperating Entity and its subsidiaries, principals and beneficial owners, if any:

1. are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any government agency;
2. (i) are not included on the Specially Designated Nationals and Blocked Persons lists maintained by the U.S. Treasury's Office of Foreign Assets Control, the United Nations Security Council Consolidated List, or similar lists of proscribed entities identified as associated with terrorism, and (ii) will not engage in transactions with, or provide resources or support to, any such individuals or organizations or anyone else associated with terrorism;
3. are not a person or entity with whom transacting is prohibited by any trade embargo, economic sanction, or other prohibition of law or regulation; and
4. have not conducted, and will not conduct, their operations in violation of applicable Money Laundering Laws, including but not limited to, the U.S. Bank Secrecy Act and the money laundering statutes of any and all jurisdictions to which the Seller or any Seller subsidiary, principal or beneficial owner is subject, and no action or inquiry concerning money laundering by or before any authority involving the Seller or any

Seller subsidiary, principal or beneficial owner is pending.

Should Cooperating Entity become aware that it or any of its subsidiary, principal or beneficial owner is subject to any of the above conditions during the term of this Agreement, Cooperating Entity must notify TNC, DEP, and the Corps immediately. If TNC or DEP determine, in their sole discretion, that Cooperating Entity or any such subsidiary, principal or beneficial owner is subject to any of the above conditions, payment under this Agreement shall not be made. The terms of this Section must be included in all permitted assignments of the Agreement.



## EXHIBIT B PROJECT MAP

